



Signed and Filed: January 4, 2013

A handwritten signature in dark ink, appearing to read "T. E. Carlson".

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 11-34331 TEC
)	
BENJAMIN S. SISON and)	Chapter 11
MARIA AGNES TOLOSA SISON,)	
)	
Debtors.)	
)	
ARDEN M. INTENGAN,)	Adv. Proc. No. 12-3081 TC
)	
Plaintiff,)	
)	
vs.)	
)	
BENJAMIN S. SISON and)	
MARIA AGNES TOLOSA SISON,)	
)	
Defendants.)	

MEMORANDUM RE MOTION TO DISMISS

The court held a hearing on September 7, 2012 regarding Defendants' motion to dismiss for failure to state a claim upon which relief can be granted. Upon due consideration, and for the reasons set forth below, the court determines that the motion should be granted.

Plaintiff made a loan to Defendants secured by certain real properties. Defendants failed to repay the loan and filed a petition under chapter 11 of the Bankruptcy Code before Plaintiff

MEMORANDUM RE
MOTION TO DISMISS

1 could foreclose. Plaintiff brought the current action seeking the
2 following relief: (1) a determination that Defendants' liability to
3 Plaintiff is excepted from any discharge Defendants might receive
4 in their chapter 11 case; and (2) declaratory relief regarding
5 Plaintiff's rights in the collateral securing the loan.

6 Plaintiff's exception-from-discharge claim must be dismissed
7 without leave to amend because it was not timely filed. The
8 deadline for such an action was March 12, 2012. Plaintiff did not
9 file this action by that date, and the court denied Plaintiff's
10 motion for extension of that deadline in an order entered on
11 September 13, 2012.

12 Plaintiff's claim for declaratory relief must also be
13 dismissed without leave to amend, because Defendants do not dispute
14 the validity of Plaintiff's deeds of trust or the loan they secure.
15 The treatment of Plaintiff's secured claim will be resolved in the
16 chapter 11 case rather than this adversary proceeding.

17 ****END OF MEMORANDUM****
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MEMORANDUM RE
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Court Service List

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